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13  
14 Attorneys for PLAINTIFFS

SUSAN K. MYERS and MICHAEL F. MYERS

15  
16 **UNITED STATES DISTRICT COURT**  
17 **FOR THE DISTRICT OF NEVADA**

18 SUSAN K. MYERS and MICHAEL F.  
19 MYERS, Individuals,

20 Plaintiffs,

21 v.

22 JAMES ARCHIBALD, et al.

23 Defendants.  
24

**Case No: 3:10-cv-258-RCJ-RAM**

**DECLARATION OF DAVID A. THOMAS  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR LEAVE TO FILE SECOND  
AMENDED COMPLAINT**

25  
26 I, David A. Thomas, declare the following:

27 1. I am an attorney with the law firm of Kasowitz, Benson, Torres & Friedman LLP,  
28 attorneys for Plaintiffs Susan K. Myers and Michael F. Myers in this action. I have personal

2

## **EXHIBIT A**

**Christopher "Casey" McNamara**

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**From:** David A. Thomas  
**Sent:** Thursday, April 28, 2011 5:10 PM  
**To:** 'Ciavarra, Louis M.'; 'anguyen@bowditch.com'  
**Cc:** Charles N. Freiberg; 'Peter Cuttitta'  
**Subject:** Myers v. Archibald - Second Amended Complaint  
**Attachments:** SANFRAN-#8091423-v4-MYERS\_Second\_Amended\_Complaint.DOC

**Importance:** High

Lou and AiVi,

Please find attached a Second Amended Complaint that we propose to file. We would appreciate it if you could take a look at it tomorrow (Friday) and let us know by the end of the day Pacific time on Friday whether defendants will stipulate to its filing. Of course, any such stipulation would be without waiver of, or other prejudice to, defendants' rights to assert any defenses to plaintiffs' claims. Given that the deadline to file a motion for leave to amend is Monday, May 2, we will need to file such a motion on Monday if defendants will not stipulate to the filing of the amended complaint. If defendants will so stipulate, we will forward to you a draft stipulation and proposed order for the filing of the amended complaint as soon as possible.

If you wish to discuss anything about this, please don't hesitate to let us know. I will be out of the office tomorrow (but checking e-mail), but Charlie Freiberg will be available (415-655-4326) if you need to speak with him. Thanks much for your consideration.

Best regards,

Dave

## **EXHIBIT B**

**Christopher "Casey" McNamara**

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**From:** Ciavarra, Louis M. [LCIAVARRA@bowditch.com]  
**Sent:** Friday, April 29, 2011 3:27 PM  
**To:** David A. Thomas; Nguyen, AiVi  
**Cc:** Charles N. Freiberg  
**Subject:** Re: Myers v. Archibald - Subpoena to Steve Oshins

David. I am out till thursday and have not seen it. While I am sure its fine we have to wait till I get back

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**From:** David A. Thomas [mailto:DThomas@kasowitz.com]  
**Sent:** Friday, April 29, 2011 06:22 PM  
**To:** Nguyen, AiVi  
**Cc:** Charles N. Freiberg <CFreiberg@kasowitz.com>; Ciavarra, Louis M.  
**Subject:** RE: Myers v. Archibald - Subpoena to Steve Oshins

AiVi,

Have you and/or Lou had an opportunity to review the amended complaint and to determine whether you'll stipulate to its filing (of course, without waiver of defendants' rights to assert any defenses)?

Thanks,

Dave

David A Thomas  
Kasowitz, Benson, Torres & Friedman LLP  
101 California Street, Suite 2300  
San Francisco, California 94111  
Tel. (415) 655-4332  
Fax (415) 520-5983  
DThomas@kasowitz.com

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**From:** Nguyen, AiVi [mailto:anguyen@bowditch.com]  
**Sent:** Friday, April 29, 2011 4:45 AM  
**To:** David A. Thomas; Ciavarra, Louis M.  
**Cc:** Charles N. Freiberg  
**Subject:** RE: Myers v. Archibald - Subpoena to Steve Oshins

David and Charles,

It was an oversight on my part for not sending out a Notice of Steve Oshins' subpoena. Yes, I can confirm that the May 3 date was simply a place holder. We can discuss the timeline of when Mr. Oshins will produce the documents as well as the substance of his production.

In the meantime, I will review your proposed Amended Complaint and get back to you today.

AiVi Nguyen  
Associate  
Bowditch & Dewey, LLP

311 Main Street  
P O Box 15156  
Worcester, MA 01615-0156  
T: 508-926-3402  
F: 508-929-3023  
anguyen@bowditch.com

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**From:** David A. Thomas [mailto:DThomas@kasowitz.com]  
**Sent:** Thursday, April 28, 2011 9:02 PM  
**To:** Ciavarra, Louis M.; Nguyen, AiVi  
**Cc:** Charles N. Freiberg  
**Subject:** Myers v. Archibald - Subpoena to Steve Oshins  
**Importance:** High

Lou and AiVi,

We understand that today your office served a subpoena for the production of documents on Steve Oshins, requiring the production of documents at your office in Massachusetts this coming Tuesday, May 3. We were surprised to learn that this subpoena, as we did not receive any notice of it as required pursuant to FRCP 45(b)(1). The subpoena also is invalid because, among other reasons, it does not afford Mr. Oshins a reasonable time for compliance and requires production at a place more than 100 miles from his location.

In addition, the subpoena requires the production of attorney-client privileged and attorney work product materials. As you will recall, we had stipulated to production of a limited scope of attorney-client privileged communications between the Myerses and the Oshins firm without waiver of the privilege. We intend to send you soon a more formal version of the stipulation, to be submitted to the court as part of a stipulation and proposed order in accordance with our agreement. In the interim, we object to the production of any attorney-client privileged materials or information.

Under these circumstances, we assume that the May 3 date in the subpoena is just a placeholder and that the parties and Mr. Oshins can and will work out an appropriate date and approach for the production of documents from the Oshins firm. We actually believe it may be easiest for us to coordinate with the Oshins firm directly to provide you with the documents you're seeking, but we can discuss this further. In the meantime, please promptly confirm to us and Mr. Oshins that he and his firm are not expected to comply with the subpoena by May 3 and that the parties will work out among themselves and Mr. Oshins an appropriate time and approach for production.

Best regards,

Dave

David A Thomas  
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